

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES of AMERICA

v.

JOSE MONTALVO,

Defendant.

**Criminal No.
08-40002-003-FDS**

ORDER EXTENDING TIME FOR NOTICE OF APPEAL

SAYLOR, J.

The Court issued the judgment and commitment order in this matter on July 15, 2009. Defendant filed a *pro se* notice of appeal that was docketed on August 6, 2009. The timing of defendant's notice failed to comply with Federal Rule of Appellate Procedure 4(b)(1), which provides, in relevant part, that "a defendant's notice of appeal must be filed in the district court within ten days . . . after the entry of . . . the judgment or the order being appealed"

It is within the Court's discretion to extend the permissible filing time by thirty days "[u]pon a finding of excusable neglect or good cause." *See* Fed. R. App. P. 4(b)(4). The First Circuit transmitted defendant's notice of appeal to this Court for a determination of whether such an extension is warranted. The Court then ordered defendant to show cause by September 30, 2009, why his failure to file a timely notice of appeal was the product of "excusable neglect" or "good cause" within the meaning of Federal Rule of Appellate Procedure 4(b)(4).

Defendant's response, filed September 28, 2009, states that the appeal was not timely filed due to an apparent miscommunication with counsel, who defendant understood was going to file such a notice on his behalf. Under the circumstances, the Court finds excusable neglect and good

cause to extend the permissible filing deadline from July 25, 2009, to August 6, 2009.

Defendant's Notice of Appeal is therefore deemed timely filed.

So Ordered.

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge

Dated: October 1, 2009